IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.897 OF 2006

Mohan Mahadev Janvalkar & Ors. .. ..Petitioners
Versus
Rajaram Ramji Kadam & ors. .. ..Respondents

Mr.V.T.Walawalkar with Sameer R. Bhalekar for petitioners
Mr.Sachindra B.Shetye for resopndents

CORAM : P.V.KAKADE, J.

DATE : 19TH APRIL, 2006

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. The defendant-tenant has preferred this petition against the judgement and order passed by lower appellate court dated 24.11.2005 dismissing the appeal and confirming the judgement and order passed by trial court dated 31.12.2002 partly decreeing the suit and issuing direction for delivering vacant and peaceful possession of the suit premises to the landlord-respondent.

3. The Shop premises admeasuring 31.82 sq.mtrs. out of single storeyed Municipal House No.1789 of Chiplun,

Dist. Ratnagiri is the subject matter of the suit. The plaintiffs-respondents came with the case that the deceased tenant and/or his heirs erected permanent structure on the suit premises and have caused damaged to the property and have committed an act contrary to Section 108(c) of the Transfer of Property Act. It was further alleged that the plaintiffs were required to take up odd jobs elsewhere due to non availability of the suit premises and require the suit premises reasonably and bonafide to start their own business. It was further contended that the plaintiff no.1 was constrained to carry on business as a hawker at village Kalwande Tal. Chiplun, whereas plaintiff no.2 was constrained to work as agricultural labourer on daily wages in the farm of others at village Kalwande. Plaintiff No.3 was constrained to take a temporary employment of a bus conductor at Kalyan, whereas the plaintiff no.4 also was constrained to take temporary and odd employment as attendant on a petrol pump in Chiplun town. In view of this position, the suit premises was acquired for their own use and occupation to start their own business. On such and other ground the suit came to be filed.

4. The defendant, inter alia, denied the allegations

and contested the suit on various aspects and sought dismissal of the suit.

5. The learned trial judge after hearing both the parties and on the basis of available evidence came to the conclusion that the plaintiffs had proved the reasonable and bonafide requirements of the suit premises for their use and occupation. It was also held that the plaintiffs would suffer greater hardship if the decree is refused to pass than the defendant if the decree is passed against them and decreed the suit for possession.

. The appeal was carried to the Addl. District Judge, Khed, who after hearing both the parties and on the basis of available evidence concurred with the findings recorded by the trial court and dismissed the appeal. Hence the present petition.

6. At the outset, it may be noted that the learned counsel for the petitioner brought to my notice the findings recorded by the lower appellate court with submission that it was apparent therefrom that there was no due application of mind by the lower appellate court, which was said to be manifest from the contents of para

43 of his judgment wherein he has summed-up the discussion on the issue of bonafide requirement with statement to the effect that it was sufficient to hold that the trial court had rightly believed the ground of reasonable and bonafide requirement and hence the finding was recorded to that effect.

7. Now, if the matter would have rested at that, there was no doubt whatsoever that the contents of para 43 of the lower appellate court judgment, read in isolation, would show that there is no application of mind. However, the other contents of the judgment revealed totally different story. I am satisfied that the learned lower appellate court judge has discussed the issue properly, as can be seen from the discussion thereon from para 36 onwards. It is also seen that while coming to the conclusion that the plaintiffs had proved their bonafide requirements of the suit premises, he has taken into account the evidence lead by both the parties. He has further come to the conclusion that the plaintiffs would suffer greater hardship if the decree is refused to be passed than the defendant if the decree is passed by giving cogent and proper reasoning. In these circumstances, the argument that the lower appellate

court has not applied its mind properly while appreciating the evidence on record is devoid of any merits.

8. Therefore, on perusal of the judgments of both the courts below, who have recorded the concurrent findings on the issue of bonafide requirement of the suit premises, I am satisfied that the reasoning adopted and findings recorded to that extent are seen to be just, legal and proper, there is absolutely no perversity nor any irregularity so as to necessitate interference by this court by virtue of provision of Article 227 of the Constitution.

9. In the result, the petitioner has no merits and stands dismissed with no order as to costs.

10. At this stage the learned counsel for the petitioner sought some time to vacate the suit premises. In view of the facts and circumstances, the time of three calender months from today is granted for vacating the suit premises on condition that the petitioner and all adult members of his family shall furnish undertaking to that effect that they shall not create third party

interest in the suit premises during the period of their occupancy and shall continue to pay the agreed rent during the period of their occupancy. The undertaking to be furnished within two weeks from the date of this order. .